



September 1, 2000

Mr. Rene Ramirez
Law Offices of Rene Ramirez
524 South Cage Boulevard, Suite "B"
Pharr, Texas 78577-5448

OR2000-3407

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138567.

The Pharr-San Juan-Alamo Independent School District (the "district"), which you represent, received a request for a copy of "the preliminary air quality report done on Memorial High School in Alamo." You claim that the requested information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code.

In raising section 552.103, the "litigation exception," you demonstrate that the requested information relates to a lawsuit, filed by the district, that was pending on the date of its receipt of the information request. You also contend that the requested report contains information that is protected by the attorney-client privilege under section 552.107(1). We have considered your arguments. Nevertheless, upon careful review of the information in question, we conclude that it represents a completed report, the public release of which is required by section 552.022(a) of the Government Code.

Section 552.022(a) provides in relevant part:

a) [T]he following categories of information are public information and not excepted from required disclosure under [chapter 552 of the Government Code] unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). Thus, pursuant to section 552.022(a)(1), a completed report is subject to required public disclosure unless it is expressly confidential under other law or protected under section 552.108. You have not raised section 552.108. Sections 552.103 and 552.107(1) of the Government Code are discretionary exceptions to public disclosure that protect the interests of governmental bodies. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (discussion of section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 630 at 4 (1994) (section 552.107(1)). As such, sections 552.103 and 552.107(1) are not "other law," for the purposes of section 552.022(a), that makes information expressly confidential. Therefore, information that is subject to required disclosure under section 552.022(a) may not be withheld under section 552.103 or section 552.107(1). Accordingly, and as you have not demonstrated that the requested report is expressly confidential under other law, the report must be made available to the requestor.

We note, however, that the report is copyrighted. An officer for public information must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See Attorney General Opinion JM-672* (1987). A governmental body must allow inspection of copyrighted materials unless an exception to disclosure applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, he or she must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550* at 8-9 (1990).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

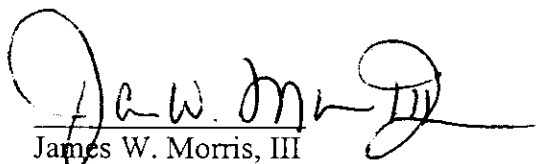
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 138567

Encl. Submitted documents

cc: Ms. Dulcinea Cuellar
The Monitor
P.O. Box 760
McAllen, Texas 78501
(w/o enclosures)